

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

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JOSEPH RICHARD-ANTONIO,

Petitioner,

-against-

12 Civ. 5174 (LAK)

ELIZABETH A. O'MEARA,

Respondent.
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ORDER

LEWIS A. KAPLAN, *District Judge*.

Petitioner was convicted in the New York Supreme Court on April 7, 2010 of criminal possession of a weapon in the third degree, criminal possession of a forged instrument in the second degree, and unlicensed driving. He was sentenced, as a second felony offender, to an indeterminate prison term of 3 ½ to 7 years on the weapons and forged instrument counts and to time served on the unlicensed driving counts. His appeal to the Appellate Division, First Department, remains pending and is unlikely to be heard before February 2014. On May 6, 2011, he filed a petition for a writ of habeas corpus in this Court, which was dismissed because he had not yet perfected his appeal to the Appellate Division. *Richards v. Fischer*, 11 Civ. 3340 (DAB) (S.D.N.Y. May 6, 2011). Petitioner on July 2, 2012, filed the present petition for a writ of habeas corpus. The petition alleges, *inter alia*, that he did so "sui juris, of the Joseph Family, in [His] capacity as the Secured Party/Creditor, Sovereign American, Holder-In-Due-Course, trade Name/Copyright Owner, Record Owner, Internationally Protected Man upon the soil of New York, and beneficiary of the Original Jurisdiction." DI 41.

Magistrate Judge Sarah Netburn, to whom this petition was referred, has filed a report and recommendation recommending that this petition be denied without prejudice on the ground that petitioner has not exhausted his state court remedies, notably the pending appeal to the First Department. Petitioner objects.

The Court has considered the objections and found them to be without merit. The petition is denied without prejudice to the filing of a new petition after petitioner has exhausted his state remedies. A certificate of appealability is denied, and the Court certifies that any appeal herefrom would not be taken in good faith within the meaning of 28 U.S.C. §1915(a)(3).

SO ORDERED.

Dated: September 12, 2013



Lewis A. Kaplan
United States District Judge